

United States
Circuit Court of Appeals

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2115

For the Ninth Circuit. /

ADOLPH BERNARD SPRECKELS,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the United States
Board of Tax Appeals.

FILED

AUG 31 1938

PAUL P. O'BRIEN,

CLERK

No. 8942

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Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic: and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

WALTER SLACK, Esq.

For Comm'r:

E. A. TONJES, Esq.,

FRANK M. THOMPSON, JR.

Docket No. 85651

ADOLPH BERNARD SPRECKELS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1936

July 6—Petition received and filed. Taxpayer notified. (Fee paid).

July 6—Copy of petition served on General Counsel.

Aug. 21—Answer filed by General Counsel.

Aug. 24—Copy of answer served on taxpayer.

1937

May 1—Hearing set week of July 6, 1937, San Francisco, California.

1937

July 12—Called July 6, 1937. Heard before Hon. Marion J. Harron, Div. 13, on the merits. Stipulation as to the facts filed.

Taxpayer's brief due Sept. 1, 1937. Respondent's brief due Oct. 1, 1937. Reply brief due Nov. 1, 1937.

Aug. 2—Transcript of hearing of July 12, 1937, filed.

Aug. 27—Brief filed by taxpayer. 8/27/37, copy served on General Counsel.

Sept. 23—Reply brief filed by General Counsel.

Oct. 25—Reply brief filed by taxpayer. 10/26/37, copy served on General Counsel.

1938

Apr. 15—Findings of fact and opinion rendered, Marion J. Harron, Div. 13. Decision will be entered for the respondent.

Apr. 16—Decision entered, Marion J. Harron, Div. 13.

May 7—Motion to fix amount of supersedeas bond filed by taxpayer.

July 6—Supersedeas bond in the amount of \$7,772.22, approved and ordered filed.

July 6—Petition for review by United States Circuit Court of Appeals, Ninth Circuit, with assignments of error filed by taxpayer.

July 6—Proof of service filed by taxpayer.

July 6—Statement of evidence lodged.

1938

- July 6—Notice of lodgment of statement of evidence and of hearing July 20, 1938 to approve statement, filed.
- July 6—Praecept of record filed, with proof of service thereon.
- July 15—Statement of evidence agreed to by the General Counsel.
- July 15—Agreed statement of evidence approved and ordered filed. [1*]

United States Board of Tax Appeals

Docket No. 85651

ADOLPH BERNARD SPRECKELS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:AR:E-1 JHU-90D, dated May 12, 1936, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual whose principal office is at No. 2 Pine Street, San Francisco, California.

*Page numbering appearing at the foot of page of original certified Transcript of Record.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on May 12, 1936.

3. The taxes in controversy are income taxes for the calendar year 1932 and in the amount of \$3886.11.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The inclusion in petitioner's income for the taxable year 1932 of the sum of \$8,085.93 as representing the net amount of dividends received by [2] the trustees under the decree of distribution in the estate of Adolph B. Spreckels, deceased, and accumulated by said trustees to October 30, 1932, the date upon which petitioner attained his majority, and thereafter paid to petitioner.

(b) The disallowance by the Commissioner of a deduction of \$625.00 paid by the guardian of petitioner to attorneys for professional services rendered in the year 1932.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Petitioner was born on October 30, 1911, and under the laws of California attained the age of majority on October 30, 1932. Petitioner's father, Adolph B. Spreckels, died June 28, 1924, leaving a last will and testament which was thereafter admitted to probate in the superior Court of the State of California, in and for

the City and County of San Francisco. Thereafter, in proceedings duly had and taken in the probate of said last will and testament, a decree of final distribution was entered therein on March 9, 1932, wherein the residue of the estate of said decedent was distributed to Alma de Bretteville Spreckels, Walter D. K. Gibson, William H. Hannam, Alexander de Bretteville, Alma [3] Spreckels Rosekrans and John N. Rosekrans as trustees to pay one half the income of said residue to Alma de Bretteville Spreckels, the widow of the decedent, during her lifetime, the decree then providing:

“During the lifetime of said Alma de Bretteville Spreckels, the remainder of the net income from the trust estate, and, after her death, the whole of such net income, shall belong to and go to Alma Spreckels Rosekrans (formerly Alma Emma Spreckels), Adolph B. Spreckels, (formerly Adolph Frederick Spreckels), and Dorothy Constance Spreckels, children of said Adolph B. Spreckels, deceased, and of said Alma de Bretteville Spreckels, share and share alike; Provided, However, that during the minority of any of said children their respective shares of said net income shall be accumulated and disposed of by said Trustees, as follows:

“As each child attains the age of majority, he or she shall receive from the Trustees his or her proper share of the accumulated net in-

come, and also shall thereafter receive his or her proper share of the current net income, which shares shall be determined by a fraction whose numerator shall be the number one (1) and whose denominator shall [4] express the number of said children then living; including the issue of any deceased child as one person, in representation of his or her parent; and such issue shall take the share his or her parent would have taken if living, by right of representation."

That petitioner is the same person as Adolph B. Spreckels (formerly Adolph Frederick Spreckels) named in the foregoing quotation from said decree of distribution.

(b) Under the foregoing provisions of said decree of distribution, said trustees accumulated to October 30, 1932, the date upon which petitioner obtained his majority, out of one sixth of the income of said residue, the net amount of \$8,085.98, which said accumulation was, pursuant to said provisions of said decree, paid by said trustees to petitioner after petitioner attained his majority on October 30, 1932. That said accumulation represented dividends received by said trustees subsequent to the date of the decree of distribution, viz., March 9, 1932, and prior to October 30, 1932.

(c) That in said letter of May 12, 1936, the Commissioner has included said sum of \$8,085.98, representing said accumulation as

aforesaid, in the item of dividends received by petitioner during the calendar [5] year 1932, thereby including in petitioner's taxable income for that year dividends in the total sum of \$50,403.53, whereas the amount of taxable dividends actually received by petitioner during said year is the sum of \$42,317.55.

(d) The action of the Commissioner in including in petitioner's income for the year 1932, one sixth of the accumulated income of said trustees to October 30, 1932, is erroneous and illegal for the reason that said accumulation was not income to petitioner when received by him but a portion of the principal of the trust fund and, therefore, not taxable to the petitioner.

(e) That prior to October 30, 1932, petitioner was a minor, and his entire estate was under the control and management of Alma Spreckels, his mother, as guardian appointed by the Superior Court of the State of California, in and for the City and County of San Francisco. That in the management and care of petitioner's estate, said guardian retained attorneys to examine and advise her as to the correctness and propriety of the accounts of the executors of the estate of Adolph B. Spreckels, deceased, petitioner's father, and paid said attorneys for the services so rendered the sum of \$625.00. That said services of said attorneys [6] were an ordinary and necessary expense of petitioner's business as conducted by his guard-

ian, and the amount paid therefor was a reasonable amount to pay for said services, and said amount should be allowed as an item of deduction in determining petitioner's income tax liability for the calendar year 1932.

Wherefore, petitioner prays that this Board may hear the proceeding and determine that there is no deficiency in petitioner's income tax liability for the year 1932.

(s) WALTER SLACK

Counsel for Petitioner

1908 Russ Building

San Francisco, California [7]

State of California,

City and County of San Francisco—ss.

Adolph Bernard Spreckels, being first duly sworn, deposes and says:

That he is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated upon information and belief, and as to those facts he believes it to be true.

(s) ADOLPH BERNARD SPRECKELS

Subscribed and sworn to before me this 30th day of June, 1936.

[Seal]

MARY D. F. HUDSON

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Dec. 22, 1936 [8]

EXHIBIT A.

IT:AR:E-1

JHU-90D

May 12, 1936.

Mr. Adolph Bernard Spreckels,
2 Pine Street,
San Francisco, California.

Sir:

You are advised that the determination of your income tax liability for the taxable year 1932 discloses a deficiency of \$3,886.11 as shown in the statement attached.

In accordance with section 272(a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period

terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By (Signed) CHAS. T. RUSSELL,

Deputy Commissioner.

Enclosures:

Statement

Form 870

JHU/TVW-1 [9]

IT:AR:E-1

JHU-90D

STATEMENT.

In re: Mr. Adolph Bernard Spreckels,
2 Pine Street,
San Francisco, California.

Income Tax Liability

Year—1932.

Income Tax Liability—\$23,024.03.

Income Tax Assessed—\$19,137.92.

Deficiency—\$3,886.11.

The deficiency shown herein is based upon the report dated September 5, 1934, prepared by Revenue Agent George H. Reier, as amended by supplemental reports dated December 11, 1934, and January 8, 1936, and upon an adjustment made by this office. Copies of the reports have been furnished you.

Careful consideration has been accorded your protest dated April 22, 1936 in which further exception was taken to the inclusion in your income of an amount accumulated for you by Walter D. K. Gibson et al., Trustees under the Will of Adolph B. Spreckels, deceased, from the effective date of the trust March 9, 1932 to October 30, 1932, when you became of age. The amount was distributed to you when you attained majority, in accordance with the terms of the will and the decree of distribution.

You contended that the amount of the accumulated income was returnable by and taxable to the trustees, and that it came to you as a part of the principal of the trust fund, distributable to you October 30, 1932, and therefore, under the express provision of section 22(b)(3) of the Revenue Act of 1932, was not taxable to you. The decision of the United States Circuit Court of Appeals, Third Circuit, in *Robert C. Roebeling v. Commissioner*, 78 F.(2d) 444,447, was cited in support of your protest.

You are advised that the Commissioner has not recognized the court decision referred to above in regard to the issue under consideration, and therefore, the decision cannot be used as a precedent in the adjustment of your case. The Bureau holds that the income under consideration was properly distributed to you in the year 1932, and represents taxable income to you in accordance with section 162

of the Revenue Act of 1932 and Articles 861 and 862 of Regulations 77. [10]

In your protest dated October 11, 1934, which was considered at a conference held in the office of the internal revenue agent in charge, exception was taken to the proposed adjustment of your distributive income from Walter D. K. Gibson et al., Trustees under the will of Adolph B. Spreckels, deceased, due to the disallowance of a deduction of \$2,750.00 claimed by the trust, representing an annuity to Anna de Bretteville, and the inclusion in trust income of \$38,414.35 representing an amount received by the trustees from the Pacific Coast Jockey Club.

The Bureau holds that the payment of the annuity is a charge against the corpus of the trust, and is not deductible by the trustees in determining net income of the trust. The additional income resulting from the disallowance of this deduction is held to be taxable to the trust as an entity, and not to the beneficiaries. As \$458.33 of this payment was reflected in fiduciary income taxable to you, in the report dated January 8, 1936, the report has been adjusted by the elimination of that amount.

The Bureau holds that the payment of \$38,414.35 from the Pacific Coast Jockey Club does not represent taxable income; therefore, the portion of this payment previously added to your income has been eliminated.

You protested against the proposed disallowance of \$2,375.00 attorneys' fees paid by your guardian

out of your estate in 1932. You contended that all amounts paid by your guardian in connection with the administration of your estate during your minority are deductible as business expenses. The decision of the Circuit Court of Appeals, Second Circuit, in *Commissioner v. Wurts-Dundas*, 54 F. (2d) 515, was cited in your protest.

The information on file in the case discloses that the legal firm of Cushing and Cushing rendered a bill for \$8,500.00 in the year 1930 for services rendered in connection with your interest in the J. D. and A. B. Spreckels Securities Co., the J. D. and A. B. Spreckels Investment Co. and other matters. Your guardian paid on this account \$1,000.00 in the year 1930 and \$7,000.00 in the year 1932. In the adjustment for the year 1930, the deduction of \$250.00, or 25 per cent, was disallowed on the ground that some items in the bill rendered by the attorneys were of a personal nature, the cost of which would constitute a personal expense. Therefore, in adjusting your income for the year 1932, the examining officer disallowed [11] 25 per cent, or \$1,750.00, on the same basis as for the prior year. As you have not shown that the amount disallowed covered actual business expense, the report has been approved with reference to this item.

A deduction of \$625.00 representing a payment made by your guardian out of your estate to attorneys for professional services rendered in connection with the closing of the Estate of Adolph B. Spreckels, deceased, was also disallowed. This is

not an ordinary and necessary business expense, and therefore the adjustment of the examining officer has been approved.

With reference to your contention that all amounts paid by a guardian for a minor are deductible as business expenses, your attention is invited to the decision of the United States Supreme Court in *Van Wart v. Commissioner*, published as Court Decision 963, Cumulative Bulletin XIV-1, page 292.

The deficiency was determined as follows:

Net income reported on return		\$89,050.79
Add:		
1. Deduction disallowed		8,125.00
Total		<hr/> \$97,175.79
Deduct:		
2. Dividends	\$653.66	
3. Capital loss	21.91	675.57
Total net income adjusted		<hr/> \$96,500.22
Plus:		
Capital net loss included		21.91
Ordinary net income adjusted		<hr/> \$96,522.13
Less:		
Dividends	\$50,403.53	
Interest on Liberty bonds	14,237.50	
Personal exemption	2,250.00	66,891.03
Net income subject to normal tax		<hr/> \$29,631.10
Normal tax at 4% on \$4,000.00		\$ 160.00
Normal tax at 8% on \$25,631.10		2,050.49
Surtax on \$96,522.13		20,840.18
Total		<hr/> \$23,050.67

Brought forward		\$23,050.67
Less:		
12½% of capital net loss	\$21.91	2.74
		<hr/>
Balance		\$23,047.93
Less:		
Income tax paid at source		23.90
		<hr/>
Corrected income tax liability		\$23,024.03
Income tax assessed, original, account #200102		19,137.92
		<hr/>
Deficiency		\$ 3,886.11

Explanation of Changes

1. There was claimed as a deduction on line 18 of your return, \$5,750.00 explained as follows: "Payment to guardian ad litem for his services in representing ward." The payment in question was made by Walter D. K. Gibson et al., Trustees under the will of Adolph B. Spreckels, deceased, for Adolph B. Spreckels, Minor, Trust. The amount has been allowed as a deduction in determining the net income accumulated by the trustees for you during your minority, and is reflected in the total fiduciary income included elsewhere in your return. Therefore, the amount is disallowed as a deduction on line 18.

The deductions totaling \$2,375.00 for attorneys' fees have been disallowed for the reasons given elsewhere in this letter.

2. Your fiduciary income has been determined to be \$11,028.03, as follows:

Revised distributable income from Trust under will of Adolph B. Spreckels, deceased	\$16,765.52
Interest received	19.44
	<hr/>
Total	\$16,784.96
Less:	
Deductions	5,756.43
	<hr/>
Total fiduciary income taxable as dividends	\$11,028.53
	[13]

As you reported dividends of \$11,682.19 from this source in your return, the amount reported has been decreased by \$653.66.

3. A loss of \$21.91 on the sale of Kern County bonds, acquired in 1925, was erroneously applied against non-taxable interest received and was not reflected in the taxable net income reported in your return. The loss has been allowed in accordance with the information furnished.

In your protest dated April 22, 1936 you stated that you did not desire a hearing in regard to the issues involved. Therefore, it is deemed advisable to issue this statutory notice of deficiency.

A copy of this letter, together with a copy of the statement, has been mailed to your representative, Mr. Walter Slack, 2307 Russ Building, San Francisco, California, in accordance with the authority conferred upon him in the power of attorney executed by you and on file with the Bureau.

[Endorsed]: U. S. B. T. A. Filed Jul. 6, 1936. [14]

[Title of Board and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1. Admits the allegations contained in Paragraph 1 of the petition.

2. Admits the allegations contained in Paragraph 2 of the petition.

3. Admits the allegations contained in Paragraph 3 of the petition.

4(a) and (b). Denies that the Commissioner erred as alleged in sub-paragraphs (a) and (b) of Paragraph 4 of the petition.

5(a). For lack of full and complete information, denies the allegations contained in sub-paragraph (a) of Paragraph 5 of the petition.

(b). Admits that petitioner received in 1932 certain income from the estate of his father, but denies the remaining allegations contained in sub-paragraph (b) of Paragraph 5 of the petition.

(c). Admits that the deficiency letter shows dividends received in the amount of \$50,403.53, but denies the remaining allegations contained in sub-paragraph (c) of Paragraph 5 of the petition. [15]

(d) and (e). Denies the allegations contained in sub-paragraphs (d) and (e) of Paragraph 5 of the petition.

Denies generally and specifically each and every allegation set forth in taxpayer's petition not heretofore admitted, qualified or denied.

Wherefore it is prayed that taxpayer's appeal be denied.

(Signed) HERMAN OLIPHANT,
General Counsel for the Department
of the Treasury.

Of Counsel:

HUGH BREWSTER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: U. S. B. T. A. Filed Aug. 21, 1936.

[16]

[Title of Board and Cause.]

FINDINGS OF FACT AND OPINION

Docket No. 85651. Promulgated April 15, 1938.

1. Petitioner's guardian paid from his funds an amount for attorney's fees to protect petitioner's interest in his father's estate. Held, this expense is a personal and not a business expense and is not deductible. *Van Wart v. Commissioner*, 295 U. S. 112.

2. A trust received income from dividends in the year 1932 to be paid to petitioner October 30, 1932, if petitioner was living. Petitioner received the income thus held for him from January 1 to October 29. Held, the petitioner and not the trust is taxable

for this income in 1932 under the provisions of section 162(b), Revenue Act of 1932.

Walter Slack, Esq., for the petitioner.

E. A. Tonjes, Esq., and Frank M. Thompson, Jr., Esq., for the respondent.

The Commissioner has determined a deficiency of \$3,886.11 in income tax liability for the year 1932. Two questions are involved: (1) Whether respondent erred in disallowing a claimed deduction of \$625 attorney's fees paid for petitioner's account by his guardian; (2) whether respondent erred in having included in petitioner's income \$8,042.65 representing income of a trust accumulated for the benefit of the petitioner during the taxable year and distributed to him upon his attaining the age of majority in that year.

Findings of Fact.

Petitioner is an individual, residing in San Francisco, California.

Petitioner's father, Adolph B. Spreckels, died June 28, 1924. Petitioner was born October 30, 1911. He reached the age of 21 years, his legal majority, on October 30, 1932.

In the year 1932 petitioner was under the guardianship of his mother, Alma de Bretteville Spreckels, who had been appointed guardian by the Superior Court of the State of California, in the City and [17] County of San Francisco. About the beginning of the year 1932 proceedings were instituted in the probate of the will of petitioner's father, Adolph

B. Spreckels, and the accounts of the executors under the will were presented to the Superior Court in San Francisco for settlement and allowance. The question arose as to whether the fees claimed by the executors of the estate were proper and the guardian of the petitioner employed an attorney to examine the executors' accounts with a view to accomplish savings in executors' and attorney's fees claimed at the time of the proposed settlement of the executors' accounts. Petitioner's guardian in 1932 paid from the funds of the petitioner the sum of \$625 on account of the legal services which she had employed. In his income tax return for 1932, petitioner claimed as a deduction the amount of \$625. Petitioner claimed the deduction as a necessary expense in connection with the protection of his interests in the estate of his father. Respondent disallowed the deduction claimed.

The last will and testament of Adolph B. Spreckels was admitted to probate in the Superior Court of the State of California, in the City and County of San Francisco, and, after proceedings had been taken in the probate of this last will and testament, a decree of final distribution was entered February 24, 1932. The residue of the estate of the decedent was distributed to six named trustees upon a certain trust set out in the decree of final distribution. It was provided in the trust made part of the decree of distribution that the trustees are empowered to manage, invest and reinvest the trust property and to collect the income of the said trust estate and to accumulate and dispose of the income of the trust

as follows: (1) One-half of the net income of the trust estate is to be paid to Alma de Bretteville Spreckels during her lifetime; (2) during the lifetime of Alma de Bretteville Spreckels, the remaining half of the net income of the trust estate shall belong to and go to Alma Spreckels Rosekrans, Adolph Bernard Spreckels, petitioner, and Dorothy Constance Spreckels, children of the decedent and of Alma de Bretteville Spreckels, share and share alike; provided, however, that during the minority of any of said children, their respective shares of said net income shall be accumulated and disposed of by the trustees, as follows:

As each child attains the age of majority, he or she shall receive from the Trustees his or her proper share of the accumulated net income, and also shall thereafter receive his or her proper share of the current net income, which shares shall be determined by a fraction whose numerator shall be the number one (1) and whose denominator shall express the number of said children then living; including the issue of any deceased child as one person, in representation of his or her parent; and such issue shall take the share his or her parent would have taken if living, by right of representation. [18]

When the last of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels, and Dorothy Constance Spreckels, who may survive, shall reach the age of legal majority, one-half ($\frac{1}{2}$) of the corpus or principal of the

trust estate shall (subject to the provisions hereinafter made for the payment of the annuity to Alma de Bretteville) be divided and distributed among said children then living, share and share alike, and, if said Alma de Bretteville Spreckels be dead at said time, then the whole of the corpus or principal shall be so divided and distributed (subject, however, to the provisions hereinafter made for the payment of the annuity to Alma de Bretteville).

Should said Alma de Bretteville Spreckels be living when the last of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels and Dorothy Constance Spreckels, who may survive, reaches the age of legal majority, then, upon the death of said Alma de Bretteville Spreckels, the remaining one-half ($\frac{1}{2}$) of the trust estate (that is, the part which shall have been retained by the Trustees to provide income for her) shall (subject to the provisions hereinafter made for the payment of the annuity to Alma de Bretteville) also be so divided and distributed among said children who may be then living.

If, at the time any divisions or distribution of any part of said trust estate, any of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels, and Dorothy Constance Spreckels, shall have died leaving issue surviving, then such issue shall take the share which his or her parent would have taken, if

living, by right of representation, notwithstanding anything hereinbefore contained.

The Trustees, in their discretion, are authorized and empowered, at any time, to advance to or for the benefit of any of said children such sums of money as they may deem proper, always charging the share which such child shall ultimately receive with the amount so advanced, together with a reasonable rate of interest, so that all of said children shall ultimately share equally in said estate.

The children of Adolph B. Spreckels, deceased, Alma Spreckels Rosekrans, Adolph Bernard Spreckels, petitioner herein, and Dorothy Constance Spreckels, and Alma de Bretteville Spreckels were all living throughout the entire calendar year 1932. Petitioner's sister, Alma, was born August 23, 1909, and Dorothy was born March 9, 1913.

On October 30, 1932, the date upon which petitioner attained majority, there was in the hands of the trustees under the trust, net income of the trust in the sum of \$8,042.65, which had accrued from January 1 to October 29, 1932, both dates inclusive, which was payable to petitioner under the trust. All of this income represented dividends received by the trustees during that period. This income was paid to petitioner. During the period from October 30 to December 31, 1932, both dates inclusive, petitioner received as his share of the net income of the trust, accruing during the latter period, the sum of \$2,985.88, all of which represented

dividends received by the trustees during the latter period.

Petitioner filed with the collector at San Francisco an income tax return for the calendar year 1932 and paid the tax shown due thereon [19] in the sum of \$19,137.92. In making the return petitioner did not include in his taxable income the income of the trust accrued from January 1 to October 30, 1932. The Commissioner included the accrued income of the trust in petitioner's taxable income.

OPINION

Harron: (1) The amount of \$625 attorney's fees paid from petitioner's funds by his guardian in 1932 was a personal expense, which is not deductible. The expenditure was not a business expense. *Clara Hill Lindley*, 26 B. T. A. 742; *affd.*, 63 Fed.(2d) 807. This issue involves the same question as was before the Supreme Court in *Van Wart v. Commissioner*, 295 U. S. 112, and that opinion of the Court is controlling here. The respondent's determination in this issue is sustained.

(2) The second issue in this proceeding involves the question whether a trust or a beneficiary of a trust is taxable in 1932 on income of the trust for that year paid to the beneficiary in that same year. Respondent contends that the income is taxable to the beneficiary under the provisions of section 162(b), Revenue Act of 1932. We agree with respondent's contention.

Subsection (b) of section 162 is set forth in the margin.¹ This subsection is one of three subsections prescribing the manner of determining the net income of a trust for taxation of income of the trust. It is phrased in positive terms and not permissive terms, viz: “There *shall be allowed* as an additional deduction * * *, but the amount so allowed as a deduction *shall be included in computing the net income of the beneficiaries whether distributed to them or not.*” [Italics are by the Court.]

Turning to what deduction shall be allowed a trust and shall be included in the net income of a beneficiary, we find the following specified: “the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries.”

¹SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year.

In this proceeding, we are concerned with the question of who is taxable upon the amount of \$8,042.65 in the taxable year, the fiduciary [20] or the beneficiary. This amount represents income of a trust received by it during the taxable year in the interval between January and October. There is no question regarding the nature of the amount involved. It is income from principal of a trust. The trust provides that any distribution of principal to the beneficiary, who is our petitioner, shall be made upon such contingencies as the facts show will be subsequent to the taxable year, i. e., on or after March 9, 1934, when petitioner's younger sister attains her legal majority. Also, the trust does not provide that any of the net income of the trust should be added to the principal of the trust. The trust, by its terms, directs the manner of distributing income of the trust. Congress intended that income of trusts should be taxed as other income is taxed and so provided in sections 161² and 162 of the Revenue Act of 1932. We conclude that the

²SEC. 161. IMPOSITION OF TAX.

(a) Application of Tax.—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income col-

amount of \$8,042.65 in question was income. See *Irwin v. Gavit*, 268 U. S. 161; *Codman v. Miles*, 28 Fed.(2d) 823.

Turning to the question of who is taxable for this income, we deem it pertinent to observe that consideration of the issue presented should be given with recognition of the oft-stated principle that taxation is a practical matter. The trust and the petitioner had the same calendar year and at the close of that year each was required to prepare his respective income tax return. At the close of the year 1932, one contingent right, referred to in the trust, had matured, namely, the petitioner, a beneficiary, had attained his legal majority. His right to receive current income of the trust held for him during the period from January 1 to October 30, 1932, had become an enforceable right to receive payment of such income. Within the taxable year it became the duty of the fiduciary to distribute such income to our petitioner. Cf. *Commissioner v. Stearns*, 65 Fed.(2d) 371. In fact, he had received it; the fiduciary had paid it to him. While we do not have the trust before us as a petitioner, we may refer to the intent of the statute as to what deductions it

lected by a guardian of an infant which is to be held or distributed as the court may direct.

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

allows the trust to receive in computing its taxable net income. It appears to be clear that section 162(b) allows the trust a deduction for the amount of its income for [21] the taxable year which is distributed in the taxable year to a beneficiary.

The meaning of sections 161 and 162 has been considered before now. Those sections are not new in the revenue acts. Sections 161 and 162 of the Revenue Act of 1932 are substantially the same as sections 219(a) and (b) of the Revenue Act of 1924. This latter section was involved in *Butterworth v. Commissioner*, 63 Fed.(2d) 944, which was affirmed by the Supreme Court in *Helvering v. Butterworth*, 290 U. S. 365. In the latter case the Supreme Court made the following statement upon the meaning of the pertinent statutory provisions:

The evident general purpose of the statute was to tax in some way the whole income of all trust estates. If nothing was payable to beneficiaries, the income without deduction was assessable to the fiduciary. But he was entitled to credit for any sum *paid to a beneficiary within the intendment of that word*, and this amount then became taxable to the beneficiary. [Italics are by the Court.]

We consider that the proper determination of the issue here turns upon the fact that within the taxable year of the trust the \$8,042.65 income it had received in that year was properly payable to and paid to our petitioner and that the trust was enti-

tled to deduction from its gross income for such amount in computing its taxable trust income. This being so, the statute prescribes that the beneficiary shall include in his net income the amount of such deduction. The amount in question was distributed to our petitioner and we conclude that he is taxable for it.

In arriving at the above conclusion, we have followed the reasoning expressed in *Helvering v. Butterworth*, *supra*. The petitioner relies upon *Roebeling v. Commissioner*, 78 Fed.(2d) 444, which reversed the Board's decision in *Robert C. Roebeling*, 28 B. T. A. 644. The following is noted. In this proceeding the amount in question, distributed to the petitioner, was income of the trust and it was distributed to petitioner as income. In the *Roebeling* case, a will created a trust by the terms of which the trustees were to pay to a beneficiary a share of principal with any accumulated income thereon. The Circuit Court of Appeals construed the terms of the trust to mean that accumulated income of a trust came to the beneficiary as part of the principal of the trust. Both principal and accumulated income of the trust were distributed to the beneficiary in the taxable year. The court held that what had been income to the trust became something totally different when it was received by the petitioner and that, since the petitioner did not receive "income" from the trust, he was not taxable upon the distribution to him by the trustees. The *Butterworth* case dealt with current income of a trust paid

to a beneficiary. This proceeding, likewise, is concerned with current income [22] of a trust paid to a beneficiary. We find no terms in the trust involved here which change the character of what was income of the trust to something else when distributed to our petitioner. He received no principal from the trust in the taxable year. We, therefore, believe that there are differences in the facts in this proceeding which distinguish it from the *Roebling* case. However, to the extent that this proceeding is not distinguishable from the case of *Roebling v. Commissioner*, *supra*, we respectfully decline to follow the conclusions reached by the Circuit Court.

Reviewed by the Board.

Decision will be entered for the respondent.

Sternhagen, dissenting: The amount of the trust income which the petitioner received in 1932 was, in my opinion, not what the statute describes as income "which is to be distributed currently by the fiduciary to the beneficiaries." The distribution was entirely because the beneficiary had reached his majority, and I do not think the word "currently" can be appropriately applied to it. The conclusion of *Roebling v. Commissioner*, 78 Fed.(2d) 444, seems to me to be correct.

Arundell, Smith, Van Fossan, and Murdock agree with this dissent. [23]

United States Board of Tax Appeals

Washington

Docket No. 85651

ADOLPH BERNARD SPRECKELS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its Findings of Fact and Opinion, promulgated April 15, 1938, it is

Ordered and decided: That there is a deficiency in income tax of \$3,886.11 for the year 1932.

Entered Apr. 16, 1938.

[Seal] (Signed) MARION J. HARRON

Member [24]

[Title of Board and Cause.]

PETITION FOR REVIEW OF DECISION BY
THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

Adolph Bernard Spreckels, the petitioner above named, by Walter Slack, his attorney, hereby files his petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the United States Board of Tax Appeals rendered in the above entitled appeal on April 16, 1938, and determining a deficiency in petitioner's

Federal income taxes for the calendar year 1932 in the sum of \$3,886.11, and respectfully shows:

I.

The petitioner, Adolph Bernard Spreckels, is a citizen of the State of California, residing in the City and County of San Francisco, State of California. Petitioner [25] was so a resident throughout the entire calendar year 1932, and filed his income tax return for the determination of his liability for Federal income taxes for said year with the Collector of Internal Revenue at San Francisco, California.

II.

Nature of the Controversy

Petitioner is the son of Adolph B. Spreckels, who died testate in the year 1924. By the Last Will and Testament of said Adolph B. Spreckels, deceased, the residue of his estate was bequeathed and devised to certain trustees upon trust, during the minority of petitioner, to accumulate a portion of the net income of the trust estate and upon petitioner attaining the age of majority to pay to petitioner such accumulated net income and thereafter to pay him his proper share of the current net income. In the event petitioner should not reach the age of legal majority, the trust provided for other disposition of said accumulated income and of the current net income thereafter accruing. Petitioner attained the age of legal majority on October 30, 1929, at which time said trustees had in their hands certain moneys

representing income accumulated by them under said trust during the portion of the calendar year 1932 up to that date, and which, according to the terms of said trust, were thereafter paid to petitioner. Petitioner in filing his income tax return for the calendar [26] year 1932 did not include said accumulations as income for said year. Thereafter the respondent having proposed to include said accumulations in petitioner's taxable income for said year, petitioner appealed to the Board of Tax Appeals. The Board by its decision entered on April 16, 1938, affirmed the action of the respondent in including said accumulations in petitioner's income. Petitioner contends that the income of the trust accumulated during his minority was income taxable to the trustees, and that when, on attaining his majority, a portion of the accumulated income was paid to him, it had lost its character as income and came to him as a bequest under his father's will and could not be regarded as income taxable to him.

III.

Petitioner, being aggrieved by the findings of fact and conclusions of law contained in the findings and opinion of the Board upon which said decision is based, and by said decision desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

IV.

Assignments of Error

Petitioner makes the following assignments of error:

(1) The Board of Tax Appeals erred in making the following findings of fact in that said findings are not [27] supported by any evidence:

- a. Any finding that the income accumulated by the trustees under the trust created by the Last Will and Testament of Adolph B. Spreckels, deceased, during petitioner's minority, was paid to him at any time prior to his attaining his majority.
- b. The finding that the trust created by the Last Will and Testament of Adolph B. Spreckels, deceased, does not provide that the accumulated net income of the trust should be added to and become a part of the principal of said trust upon distribution.

(2) The Board of Tax Appeals erred in determining that the accumulations received by petitioner from the trustees of the trust created by the Last Will and Testament of Adolph B. Spreckels, deceased, upon petitioner attaining the age of legal majority on October 30, 1932, were income currently distributed by said trustees to petitioner within the meaning of the Revenue Act of 1932.

(3) The Board of Tax Appeals erred in determining that the accumulations paid by the trustees under the trust created by the Last Will and Testament of Adolph B. Spreckels, deceased, to petitioner on his attaining the age of legal [28] majority on October 30, 1932, represented income subject to taxation to petitioner in the calendar

year 1932 under the provisions of the Revenue Act of 1932.

(4) That the Board of Tax Appeals erred in determining that there was a deficiency of income tax due from petitioner for the year 1932 under the provisions of the Revenue Act of 1932, by reason of the receipt by petitioner of moneys representing income accumulated by the trustees of the trust created by the Last Will and Testament of Adolph B. Spreckels, deceased, prior to petitioner attaining the age of majority.

Wherefore, petitioner prays that the United States Circuit Court of Appeals for the Ninth Circuit review the decision of the United States Board of Tax Appeals entered in the above entitled appeal on April 16, 1938, to the end that the errors complained of may be corrected by said Court.

Dated: June 28, 1938.

(s) WALTER SLACK

Attorney for Petitioner
1908 Russ Building
San Francisco, California

[29]

State of California,
City and County of San Francisco—ss.

Walter Slack, being first duly sworn, says that he is the attorney of record for the above named petitioner; that as such attorney he is authorized to verify the foregoing petition for review; that he has

read the said petition and is familiar with the statements contained therein, and that the statements made are true to the best of his knowledge, information and belief.

(s) WALTER SLACK.

Subscribed and sworn to before me this 28th day of June, 1938.

[Seal] (s) LOUIS WIENER,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires July 30, 1939.

[Endorsed]: U. S. B. T. A. Filed July 6, 1938.
[30]

[Title of Board and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW.

To John P. Wenchel, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

Please take notice that the petitioner above named on the 6th day of July, 1938, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C. a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Board heretofore rendered in the above entitled appeal, and entered on April 16, 1938. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated: At Washington, D. C. this 6th day of July, 1938.

(s) WALTER SLACK,
Attorney for Petitioner,
1908 Russ Building,
San Francisco, California.[31]

Receipt of copy of the annexed Notice of Filing Petition for Review and copy of annexed Petition for Review is hereby admitted this 6th day of July, 1938.

J. P. WENCHEL,
Attorney for Respondent.

[Endorsed]: U. S. B. T. A. Filed July 6, 1938.
[32]

[Title of Board and Cause.]

STATEMENT OF EVIDENCE.

The following is a statement of evidence introduced before the Board of Tax Appeals in the trial of the above entitled appeal, so far as the same is essential to the decision of the questions presented by the petitioner's petition for a review of the decision of the Board entered in the above appeal on April 16, 1938.

Said appeal was submitted to the Board upon an agreed statement of facts and the admissions in the pleadings, and no other evidence oral or documentary was introduced. Said agreed statement of facts in so far as it contains any matter relevant

to a consideration of petitioner's assignments of error contained in said petition for review, is in words and figures as follows:

Petitioner's father was Adolph B. Spreckels, who [33] died June 28, 1924, leaving a last will and testament which was thereafter admitted to probate in the Superior Court of the State of California, in and for the City and County of San Francisco. Thereafter in proceedings duly had and taken in the probate of said last will and testament a decree of final distribution was entered therein dated February 24, 1932, and filed in said court on March 9, 1932, wherein the residue of the estate of said decedent was distributed to Alma de Bretteville Spreckels, Walter D. K. Gibson, William H. Han-nam, Alexander de Bretteville, Alma Spreckels Rosekrans and John N. Rosekrans, as Trustees, upon a certain trust therein set out. The only portion of said decree of distribution relevant to the present proceeding, which said portion of the decree contains all the provisions thereof concerning the trust just referred to, is in words and figures as follows:

"It is further ordered, adjudged, and decreed that all the rest, residue, and remainder of the Estate of Adolph B. Spreckels, deceased, now remaining in the hands of the Executors of the Will of said deceased, and all other property not known or described in this decree, but in which said Adolph B. Spreckels, deceased,

in his lifetime, or his estate after his death, had or has acquired any interest, (including the remainder after the life estate of Alma de Bretteville Spreckels in and to the real property situated in the [34] City and County of San Francisco hereinafter and hereinbefore described, and in which said Alma de Bretteville Spreckels has a life estate, and including, also, the remainder after the life estate of said Alma de Bretteville Spreckels in and to the personal property hereinabove and hereinafter described, in which said Alma de Bretteville Sprekels has a life estate) be, and it is hereby, distributed to Alma de Bretteville Spreckels, Walter D. K. Gibson, William H. Hannam, Alexander de Bretteville, Alma Spreckels Rosekrans, and John N. Rosekrans, to be held by them and their successors in trust, including, among such successors, such person as may be appointed trustee to fill the vacancy aforesaid, created by the resignation of said William Clayton, and upon the following trusts and confidences:

“Said Trustees shall have, and they are hereby given power to hold, manage, invest, and reinvest said trust property, and the proceeds thereof, in such manner and in such investments as to them shall seem for the best interests of the beneficiaries thereof; and to collect the income of the said trust estate; and, as incidental to the trust, the Trustees are invested with full power and authority to sell, lease, mortgage,

and pledge the whole or any part of the trust property on [35] such terms and conditions as in their judgment shall seem proper, and, in making and executing leases, said Trustees are authorized and empowered to make, execute and deliver such leases for a period extending beyond the termination of the trust estate.

“During the lifetime of said Alma de Bretteville Spreckels, said Trustee shall, from time to time, at such intervals as may be found practicable, pay to her one-half ($\frac{1}{2}$) of the net income from the trust estate.

“During the lifetime of said Alma de Bretteville Spreckels, the remainder of the net income from the trust estate, and, after her death, the whole of such net income, shall belong to and go to Alma Spreckels Rosekrans (formerly Alma Emma Spreckels), Adolph B. Spreckels, (formerly Adolph Frederick Spreckels), and Dorothy Constance Spreckels, children of said Adolph B. Spreckels, deceased, and of said Alma de Bretteville Spreckels, share and share alike; provided, however, that during the minority of any of said children their respective shares of said net income shall be accumulated and disposed of by said Trustees, as follows:

“As each child attains the age of majority, he or she shall receive from the Trustees his or her proper share of the accumulated net income, and also shall thereafter [36] receive his or her proper share of the current net in-

come, which shares shall be determined by a fraction whose numerator shall be the number one (1) and whose denominator shall express the number of said children then living; including the issue of any deceased child as one person, in representation of his or her parent; and such issue shall take the share his or her parent would have taken if living, by right of representation.

“When the last of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels, and Dorothy Constance Spreckels, who may survive, shall reach the age of legal majority, one-half ($\frac{1}{2}$) of the corpus or principal of the trust estate shall (subject to the provisions hereinafter made for the payment of the annuity to Anna de Bretteville) be divided and distributed among said children then living, share and share alike, and, if said Alma de Bretteville Spreckels be dead at said time, then the whole of the corpus or principal shall be so divided and distributed (subject, however, to the provisions hereinafter made for the payment of the annuity to Anna de Bretteville).

“Should said Alma de Bretteville Spreckels be living when the last of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels and Dorothy Constance [37] Spreckels, who may survive, reaches the age of legal majority, then, upon the death of said Alma de Bretteville Spreckels, the remaining one-

half ($\frac{1}{2}$) of the trust estate (that is, the part which shall have been retained by the Trustees to provide income for her) shall (subject to the provisions hereinafter made for the payment of the annuity to Anna de Bretteville) also be so divided and distributed among said children who may be then living.

“If, at the time any divisions or distribution of any part of said trust estate, any of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels, and Dorothy Constance Spreckels, shall have died leaving issue surviving, then such issue shall take the share which his or her parent would have taken, if living, by right of representation, notwithstanding anything hereinbefore contained.

“The Trustees, in their discretion, are authorized and empowered, at any time, to advance to or for the benefit of any of said children such sums of money as they may deem proper, always charging the share which such child shall ultimately receive with the amount so advanced, together with a reasonable rate of interest, so that all of said children shall ultimately share equally in said estate.

“The said Trustees may, if they so desire, and as far as they are able to do so, retain the real property [38] near Napa, in the County of Napa, State of California, and described in the Will of said Adolph B. Spreckels, deceased,

as 'my ranch near Napa', and, if said property is owned by Monarch Investment Company at the time, said Adolph Bernard Spreckels (son of Adolph B. Spreckels, deceased), shall have the right, if he so elect, to take said ranch as a part of his share of said estate at the reasonable value thereof at the time of the termination of the trust as to the one-half ($1/2$) first to be divided among the children of said Adolph B. Spreckels, deceased, and unless said Adolph Bernard Spreckels shall exercise such right at that time, then he shall have no further right of election, such right of election shall in no way interfere with or prevent the sale or other disposition of said property by said Monarch Investment Company.

"In no event shall the trust created hereby exceed the limit of the lives of said Alma de-Bretteville Spreckels, Alma Spreckels Rosekrans, Adolph Bernard Spreckels, and Dorothy Constance Spreckels.

"In the event that none of said children, viz., Alma Spreckels Rosekrans, Adolph Bernard Spreckels, and Dorothy Constance Spreckels, nor the issue of any of them, shall be living, upon the termination of the trust estate, then the trust property shall go to and vest in the following persons in the following proportions: [39] Grace S. Himilton, one-fourth ($1/4$) thereof; Lillie S. Wegeforth, one-fourth ($1/4$) thereof; Claus Spreckels, one-fourth ($1/4$) thereof;

Marie Spreckels Eligalde, one-sixteenth (1/16) thereof; Adolph B. Spreckels, one-sixteenth (1/16) thereof; John D. Spreckels, III, one-sixteenth (1/16) thereof, and Geraldine Spreckels, one-sixteenth (1/16) thereof, being the heirs of John D. Spreckels, deceased, the deceased brother of Adolph B. Spreckels, (subject, however, to the provisions hereinafter made for the payment of the annuity to Anna de Bretteville).

“Any act consented to, in writing, by at least four (4) Trustees, shall be binding upon the trust estate; but no act of said Trustees shall be valid unless authorized or approved by at least four (4) Trustees; provided, however, that any Trustee shall have the right to delegate his power to another Trustee by an instrument in writing, signed and acknowledged in the manner provided by law for the execution and acknowledgment of deeds of real property, and recorded in the office of the County Recorder of the City and County of San Francisco, State of California.

“The Trustees shall have the right to accept the resignation of any Trustee desiring to resign his trust. In case of a vacancy among the Trustees caused by resignation or death, or any other cause, the vacancy may [40] be filled by the election of a new Trustee by the remaining Trustees, with the written consent of said Alma

de Bretteville Spreckels, however, if she be living at the time.

“No Trustee appointed by the Will of said Adolph B. Spreckels, deceased, and no Trustee named in this decree, nor any successor Trustee appointed in any manner, either by the remaining Trustees or by the Court, shall be required to give any bond for the faithful performance of his duties as such Trustee.

“The following are the surviving children of Adolph B. Spreckels, deceased, and their respective dates of birth:

“Alma Spreckels Rosekrans (formerly Alma Emma Spreckels)—born August 23rd, 1909;

“Adolph Bernard Spreckels (formerly Adolph Frederick Spreckels)—born October 30th, 1911;

“Dorothy Constance Spreckels—born March 9th, 1913.”

On October 30, 1932, the date upon which petitioner attained majority, there was in the hands of the Trustees under the trust referred to in paragraph 2 of this stipulation, net income of said trust in the sum of \$8,042.65, which had accrued from January 1, 1932, to October 29, 1932, both dates inclusive, and was payable to petitioner under the provisions [41] of said trust. All of said income represented dividends received by said Trustees during said period. Said income was on said date paid to petitioner.

The foregoing is a full, true, correct and concise statement of all the evidence in the above entitled appeal, and contains all of the evidence offered or introduced on the trial of the above appeal, except the admissions in the pleadings, in any way relating to or having to do with the decision of the above appeal in so far as the said decision is drawn in issue by petitioner's petition for review above referred to.

Wherefore, petitioner prays that the foregoing statement of evidence be allowed, settled and approved as such for all the purposes of said petition for review, to the end that the foregoing matters may be made to appear of record.

Dated: July 6, 1938.

WALTER SLACK,
Attorney for Petitioner,
1908 Russ Building,
San Francisco, California.

July 15, 1938 agreed to.

J. P. WENCHEL,
Counsel for Respondent.

Approved and ordered filed this 15th day of July, 1938.

(s) MARION J. HARRON,
Member.

[Endorsed]: U. S. B. T. A. Lodged July 6, 1938.
Filed July 15, 1938. [42]

[Title of Board and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You are hereby requested to prepare and certify and to transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, with reference to the petition for review heretofore filed by the petitioner in the above entitled appeal, a transcript of the record in the above case, prepared as required by law and by the rules of said Court, and to include in said transcript of record the following documents or certified copies thereof, to-wit:

(1) The docket entries of all proceedings before the Board of Tax Appeals.

(2) Pleadings before the Board of Tax Appeals, as follows:

(a) Petition for redetermination.

(b) Answer of respondent. [43]

(3) The findings of fact and opinion of the Board of Tax Appeals.

(4) The decision of the Board.

(5) The petition for review filed by petitioner in the above appeal, together with notice of filing the same and the admission of service thereof.

(6) The statement of evidence settled and approved for use on said petition for review.

(7) This Praecipe.

Dated: July 6, 1938.

WALTER SLACK,
Attorney for Petitioner,
1908 Russ Building,
San Francisco, California.

July 15, 1938 agreed to.

J. P. WENCHEL,
Counsel for Respondent.

Receipt of copy of the foregoing Praecipe for Record is hereby admitted this 6th day of July, 1938.

(s) J. P. WENCHEL,
Attorney for Respondent.

[Endorsed]: U. S. B. T. A. Filed July 6, 1938. [44]

[Title of Board and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 44, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Ap-

peals, at Washington, in the District of Columbia, this 20th day of July, 1938.

[Seal]

B. D. GAMBLE,

Clerk.

United States Board of Tax Appeals.

[Endorsed]: No. 8942. United States Circuit Court of Appeals for the Ninth Circuit. Adolph Bernard Spreckels, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed August 1, 1938.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

